

**QUESTIONNAIRE ON THE MODERNISATION OF THE
TRADE PILLAR OF THE MODERNISATION OF THE EU-CHILE ASSOCIATION
AGREEMENT**

This questionnaire is targeting European Union (EU) business (companies/business organisations) and is not intended to be an open public consultation. It consists of technical questions (e.g. on trade flows and opportunities, customs procedures, rules of origin, standards and technical regulations, trade defense, intellectual property rights etc.). EU business is invited to comment on practical experience doing business in Chile in order to facilitate and orientate the negotiations of a modernised EU-Chile trade agreement.

Please indicate your preference when replying to this questionnaire:

Please note that regardless of the option chosen, your contribution may be subject to a request for access to documents under the EU [Regulation 1049/2001](#) on public access to European Parliament, Council and Commission documents. In such cases, the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).

1. I consent to the publication of all information in my contribution in whole or in part, including my name or my organisation's name; and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.
2. I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication. In this case, respondents should not include in their submissions any data or information that would allow themselves, or their organisations, to be identified.

Background

The EU and Chile concluded an Association Agreement in 2002, which included a comprehensive [Free Trade Agreement](#) (FTA) that entered into force in February 2003. This has led to a significant increase in trade in goods and services between the EU and Chile. In 2016 bilateral trade in goods had more than doubled since entry into force of the FTA, from the initial € 7.7 billion (bn) in 2003 to € 16 bn in 2016. An Association Committee and Special Committees, including for trade, were created within the framework of the EU-Chile Association Agreement which meet once a year to review the implementation of the FTA and address all relevant trade related issues. More information on EU-Chile trade relations see: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>.

The EU and Chile are currently examining the possibility to modernize the existing FTA pillar, so as to ensure that it addresses all relevant aspects of the trade and investment relationship between the EU and Chile. The trade pillar covers market access and improved rules for industrial and agricultural goods, services and establishment, investment liberalization and digital trade, and government procurement; as well as rules on intellectual property, competition, customs and trade facilitation, technical barriers to trade (TBTs), transparency and regulatory convergence, sanitary and phytosanitary issues (SPS), rules of origin and trade defense instruments. The FTA pillar will include new areas such as provisions on SMEs, energy and raw materials, anti-corruption, trade and sustainable development and gender.

The negotiating directives to modernise the EU-Chile Association Agreement were adopted by the Council on 13 November 2017.

Chile represents a market of 18 million consumers with a combined GDP of € 224 bn in 2016. The economy grew considerably over recent decades. While growth has slowed mainly due to lower commodity prices in the recent years, Chile remains an interesting market with a large middle class. Chile is an open market with in general low tariffs and few barriers to trade and investment. Chile, an OECD member, has negotiated 26 trade agreements of which 25 have entered force, covering 65 countries and can also serve as an entry point to the Latin American region.

EU-Chile trade

The EU is Chile's second trade partner, comprising 13% of Chile's total trade in 2016. Bilateral trade in almost all import categories has been very stable over the last years, with the EU registering a slight trade surplus of € 1.2 bn in 2016.

The EU is Chile's second import supplier, after China, and is Chile's third largest export market, after China and the US. EU imports from Chile are dominated by raw materials except fuels (mainly copper), manufactured goods and food products. EU exports to Chile are mainly machinery and transport equipment, followed by chemical products and manufactured goods. Between 2013 and 2015, total trade in services increased moderately, from € 4.7 bn to € 5.8 bn, with an EU surplus of € 1.8 bn in 2015. The EU is Chile's biggest foreign investor, accounting for 33% of foreign direct investment (FDI) stocks and for 13% of FDI flows in the country.

Information on the questionnaire

The questionnaire is divided into the following sections:

- I. Trade in Goods**
- II. Trade in Services, Investment liberalisation and Digital trade**
- III. Rules** (Regulatory convergence and transparency, Intellectual Property Rights, Competition, Public Procurement, SMEs, Sustainable development and gender, Anti-corruption)
- IV. Other issues**

Should there be **any additional point** you wish to draw the Commission's attention to, please describe this **under chapter "IV. Other issues"**. In addition, where possible, we would appreciate receiving as much specific information as possible (substantiated where possible by economic indicators and/or data) as to respondents' interests, prioritisation within sectors, and any proposals for solutions, where problems have been identified.

The questionnaire has been prepared in order to provide the Commission with information to assist it in establishing priorities and taking decisions throughout the negotiating process. Your reply to this questionnaire is important in this process and we thank you in advance for your contribution. The Word document can be used to fill in your comments directly under the relevant points.

The Commission, subject to the application of the EU's rules on access to documents (Regulation (EC) No 1049/2001), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

Please send your replies at the latest until 26 February 2018 to the following e-mail address: trade-industry@ec.europa.eu.

I. TRADE IN GOODS

A. General goods related questions

1. What is your assessment of the potential for growth in your sector's trade flows with Chile? What short and medium term developments (investment plans, mandatory requirements, societal changes, implementation of agreements or other) should significantly affect the market share of EU exports for specific products?
2. Are you aware of the existence of a FTA between the EU and Chile? What are the specificities of your sector that may have relevance for a modernised free trade agreement with Chile? Could you specify your overall "offensive" and "defensive" interests in the present negotiations? (*Note: "Offensive interest" is understood to mean the interest you may have in gaining access to the Chile market. "Defensive interest" is understood to mean competition from Chilean firms in your domestic market.*)
3. Is there any element in one or more of Chile's trade agreement with third countries (ie, countries outside the EU) that harms your competitive position?

B. Questions related to rules of origin (add footnote to specify what is "rule of origin")

Appropriate rules of origin for concerned goods ensure that companies can use preferential tariffs and treatment under a trade agreement.

4. What preferential rules of origin should apply in the sector(s) of your interest in the agreement with Chile? If relevant, please indicate the maximum level of non-EU origin materials that you would wish to apply to your products.
5. Does your industry need specific flexibility to source abroad, including from other countries in the region? If yes, from which country(ies)? Could your industry indicate sensitivities as regards possible cumulation by countries of materials or products from other countries or from other EU trade agreement partners?

C. Questions related to duties, import restrictions and prohibitions

6. What depth of tariff cuts would be necessary – and on which goods – for these to make an economic difference to your sector?
7. Does your sector face import restrictions or prohibitions in Chile? If so, please specify the type of import restrictions (import duty, combined with additional or specific duties, tariff rate quota, import licensing, import prohibition, etc.)? Please specify the likely effect of their elimination.
8. What other measures are you faced with when importing to Chile (for example import licensing requirements)? Are notices/information on all measures related to import restrictions or prohibitions publicly available?

D. Questions related to access to energy and raw materials

9. Does your sector have an interest in trade and investment in energy goods or raw materials from Chile? If so, please specify what energy goods or raw materials and describe their economic relevance to you.

10. Does your sector have an interest in the promotion of renewable energy and energy efficiency in Chile? Is this an area where your sector would benefit from regulatory cooperation, convergence, and possibly harmonisation of standards? Please indicate any specific trade or investment barrier in Chile in these sectors.
11. Which measures could be included in order to facilitate, or reduce the cost of, trade and investment in raw materials? Is your sector affected by export restrictions or investment restrictions in Chile? If so, which? Please specify the likely effect of their elimination.
12. Are you aware of dual pricing of energy goods or raw materials (i.e. where goods are priced at a lower level on the domestic market compared to international market prices to the benefit of local production)?
13. Are you aware of any barriers to access infrastructure, or local content issues with regard to trade and investment in energy and raw materials?
14. In addition to legally binding provisions, does your sector favour closer cooperation in the field of energy and raw materials with Chile? If so, in which form and on what issues)?

E. Customs Procedures (import, export and transit procedures)

15. Overall, do you face any problems with the procedures and the requirements for imports, exports and/or transit in Chile?
16. Please describe the specific problems you may encounter - and where possible provide a detailed description of the problem(s) faced - related to:
 - inspections and controls during clearance, pre-shipment inspections
 - fees and charges
 - release times, confidentiality of data, data requirements, documentation requirements, compulsory use of customs brokers
 - procedures for legal recourse/appeal
 - transparency/publication of and access to trade regulations
 - application or non-application of relevant international standards
 - discriminatory treatment, lack of uniformity in application of procedures, complexity in application of procedures, use or non-use of information technology
 - tariff classification, customs valuation, reference pricing
 - relations with/access to the customs authorities, co-ordination between different border agencies
 - transshipment, logistics/congestion
 - procedures for temporary admission of goods
 - procedures for repaired goods
 - the use of the Integrated Foreign Trade System (SICEX)
 - other customs and/or import/export related procedures (please specify)
17. Do you have the possibility to make use of further customs simplifications offered by Chilean customs?
18. Do you experience problems trading with Chile due to the lack of uniformity of customs procedures, requirements, data and documentation applied and used at Chilean borders?

19. Do you use advance rulings relating to tariff classification or origin issued by the Chilean customs administration?
20. Are you aware/member of a Chilean Authorized Economic Operators (trusted traders) programme/pilot programme? If applicable, what is your experience with the programme?

F. Questions related to discrimination and transparency in domestic regulation and taxation

21. Is your sector faced with measures and practices that discriminate between domestically produced goods and goods imported into Chile? If so, describe the nature of this discrimination (for example, is it based on legislation or on de facto discrimination; does it concern a regular domestic regulation and/or taxation regime; is it linked with rules for "free trade zones"?).

Do you encounter problems due to lack of transparency in Chile's regulation, e.g. non-publication of legislation or other documents? (Please also refer to the detailed questions under section III.A below regarding transparency).

G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)

22. Have you had experience related to the use of trade defence instruments in Chile (anti-dumping, anti-subsidy or safeguards)?

Were there particular difficulties in communicating with and/or receiving information from authorities dealing with trade defence instruments?

Have you encountered market distortions (subsidies, pricing policies) in Chile which results in dumped or subsidised imports causing injury to the EU industry concerned?

H. Technical Barriers to Trade

In the context of this questionnaire, the term "Technical Barriers to Trade (TBT)" is intended to mean requirements applicable to products (e.g. technical regulations) and the conformity assessment procedures intended to verify compliance with these requirements (e.g. testing, inspection and certification, product registration or licensing, etc.).

Please provide comments on the following issues. Comments are particularly welcome if you or your colleagues in the industry consider that some of these issues should take priority in the TBT discussions.

23. Have you found product requirements to be a problem in exporting your products to Chile? (Often, trade barriers arise not necessarily because of the product requirements as such; but because of the procedures used to verify compliance with these requirements such as conformity assessment procedures).

- a) What are the procedures used to verify compliance of products in your sector? Are they more burdensome than those applied in the EU?¹
 - b) Do authorities accept product specific test results from accredited EU conformity assessment bodies?
 - c) Do you encounter difficulties (e.g. increased costs and marketing delays) due to these conformity assessment procedures?
24. How do you rate Chile's transparency and regulatory practice in the development, adoption and enforcement of technical regulations? Please focus in particular on the questions below, and provide answers that are as detailed as possible.
- a) How do authorities consult industry on proposed technical regulations or conformity assessment procedures? For example, does Chile systematically conduct public consultations on proposed TBT measures? How is transparency and participation of stakeholders ensured with respect to any standards that are used in support of technical regulations or conformity assessment procedures?
 - b) Do importers and domestic producers have equal opportunities to submit comments during the drafting of new technical regulations or conformity assessment procedures, before the proposal is adopted?
 - c) Are similar consultation opportunities being provided to both domestic and foreign industry?
 - d) In your experience, have comments made by stakeholders been taken into account?
 - e) Is industry involved in standardization work in Chile? In particular, are foreign and/or foreign-invested companies allowed to participate in standard-setting activities in your sector (e.g. membership in technical committees developing new standards)? If yes, what is your experience with regard to this area?
 - f) Have you ever tried to obtain information about proposed or adopted technical regulations, conformity assessment procedures or standards from the Chilean TBT Notification and Enquiry Point? Have you encountered specific difficulties?
25. Do any or all of the following issues pose particular problems with regard to exporting your products to Chile?
- (i) short implementation periods for new measures;
 - (ii) availability of technical regulations, conformity assessment procedures and related applicable standards (for example official Journal, public website etc.).
26. Does Chile use relevant international standards as a basis for its technical regulations, conformity assessment procedures and national standards in your sector? If so, are there any unnecessary deviations from, or additions to those international standards, that could create barriers to trade?
27. Do you encounter any barriers to trade arising from burdensome or discriminatory labelling or marking requirements?

¹ For instance, EU legislation may allow for a manufacturer's declaration of conformity without the mandatory intervention of a third party certification body, whereas Chilean legislation may require that the product be certified by a public authority or a certification body approved by this authority.

28. Do you see increased use of international standards as a tool for increasing compatibility of technical regulations as an important element of the trade agreement? What standards are you using?
29. Have you encountered in Chile any specific barriers for small and medium size enterprises (SMEs) in your sector? If so, please describe briefly.
30. Would you consider it useful/beneficial to have **a specific annex** for the following sectors:
- engineering (machinery, electric and/or electronic products)
- If an engineering annex should be considered, can you provide this information:
- Which sub-sectors could be of relevance for your industry?
 - Which areas could you suggest to be covered?
 - Do you have a specific regulatory concern/piece of legislation of Chile to flag?
- automotive
 - pharmaceutical
 - chemical
 - textiles
 - medical devices
 - cosmetics

I. Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)

Sanitary and Phytosanitary Measures apply in order to protect human, animal, and plant health. Your answers to the specific product questions below will be taken as an indication of interest that might change over time.

31. List the agricultural products (these include animals and animal products, plants and plant products) and fishery products you are currently exporting to Chile / importing from Chile.

List the agricultural and fishery products that you may be potentially interested to export / import in future to / from Chile.

32. Please specify the major Sanitary and Phytosanitary (SPS) barriers you have encountered in the past (or may potentially encounter) when exporting or trying to export agricultural and fishery products to Chile, in terms of SPS conditions included in health certificates and administrative procedures in Chile.

With your knowledge of the standards and SPS control systems both in the EU and Chile do you have any recommendations for solutions which would facilitate trade?

Please specify which elements/provisions of the existing SPS chapter of the Agreement with Chile you consider most useful in order to facilitate trade. Where do you see room for improvement for removing SPS barriers? Please comment.

33. Do you expect that an SPS chapter in the proposed future agreement will benefit your industry? If so, please clarify specify why and how.

34. On the basis of your previous response, which basic elements/provisions should be included or reinforced in the new SPS chapter with Chile in order to potentially fulfil your priorities? Please comment.

- a) Multilateral obligations
- b) Transparency (better notification provisions on SPS import rules including predictability and stability of SPS rules)
- c) Approval procedures
- d) Regionalisation for animal and plant diseases
- e) Equivalence (system of recognition)
- f) Pre-listing of exporting establishments
- g) Certification procedures
- h) Verification procedures
- i) Emergency measures
- j) Information exchange
- k) Notification and consultation
- l) Safeguard measures
- m) Labelling
- n) Single (EU) accreditation process for meat and other agricultural products
- o) Animal welfare
- p) Other

II. TRADE IN SERVICES, INVESTMENT LIBERALISATION AND DIGITAL TRADE

- 35. What are the main barriers that your sector encounters in trading services cross border with Chile? (For example obligation to have a local commercial presence such as an office, branch or subsidiary in order to conduct business, etc.)
- 36. What are the main barriers that your sector encounters when investing and establishing a commercial presence in Chile? (For example closed sectors, capital ownership / equity caps, joint venture requirements, restrictions on land ownership, licencing or authorisation procedures, limitations to management control, complex and lengthy administrative procedure, discrimination comparing to local investors, profit and capital transfer restrictions, access to finance or specific support for foreign investors, lack of transparency etc.).
- 37. What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in Chile? (For example difficulty in obtaining work permits and visas due to lengthy procedures, recognition of your employees' qualifications, lack of transparency in regulations, etc.)? Are there any occupations and/or professions in Chile that cannot by law be exercised by foreigners; or any business activities/operations that cannot be managed or directed by foreigners?
- 38. Do you encounter problems due to lack of transparency? (For example lack of publication of legislation or other relevant documents - please also refer to the detailed questions under section III.A below regarding transparency.) Is there an interest in having a Mutual Recognition Agreement in your sector (to cover recognition of standards, licenses, qualifications or else)?
- 39. Do you consider that there are problems regarding investment protection and/or discriminatory treatment of established investors/investment in Chile? If 'yes', have you been able to successfully deal with these problems following contacts with authorities? (e.g. through legal/administrative proceedings presented to the competent legal jurisdiction).

40. Are you at a disadvantage vis-à-vis third countries' competitors, due to trade and investment agreements between Chile and the countries from where those competitors operate?

III. RULES

A. Regulatory convergence and Transparency

To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation or other relevant documents. In the questions below, administration/government should also be understood as local authorities, for instance regulatory bodies, regulatory authorities, certification offices, licencing authorities.

41. Is information on trade-related regulations and their administration published and readily available, including on laws and regulations, procedures, penalties, appeal procedures, administrative guidelines and practice, decisions, and agreements with Chile where relevant?

Are there enquiry points available and accessible to interested parties (including through websites) which help make information on trade-related regulations and their administration available?

What is your assessment of Chile's transparency and regulatory practices in the development and adoption of trade-related rules and regulations? Are the intervals between publication and entry into force of rules in any trade relevant area sufficient to allow interested parties to become acquainted with and able to comply with them? Are appropriate opportunities offered for prior consultation and commenting on new and amended rules (including sufficient minimum delays for comment)? Are there any areas or sectors where consultation could be improved?

Are advance rulings available from the administration (such as for trade in goods on customs classification and origin)?

42. Are there adequate complaints possibilities and appeal procedures (in terms of non-discrimination, transparency, possibility for representation by independent legal counsel, cost and timelines set by different authorities, including Customs)?
43. Where available, identify best practices (such as existing information and transparency mechanisms in Chile) that could serve as a reference or starting point.
44. Are there specific channels of information for SMEs (including through dedicated websites) in Chile?

B. Intellectual Property Rights

45. Are you satisfied with the current conditions for protection and enforcement of intellectual property rights (IPR) in Chile? Please explain briefly the nature/scope of the problem, if any? According to your experience, what are the main weaknesses / problems of the current system in force (if any)?
46. Is the administrative capacity of Chile adequate for a timely and adequate registration of IP rights? Regarding the judiciary, are there specialised courts dealing with IPR matters in Chile?

47. Is an adequate and effective protection and enforcement of IPR in Chile essential for the pursuit of your trading activities there? Please indicate whether you consider intellectual property rights issues to be priorities; and specify which IPRs are the top priorities for you in Chile, and why :

- a. Copyright and related rights
- b. Trademarks
- c. Geographical Indications (GIs)
- d. Designs
- e. Patents
- f. Data protection
- g. Plant variety
- h. Enforcement

48. Have you encountered problems in protecting/enforcing your IPRs in Chile? If yes, how did the protection/enforcement mechanisms function in Chile? Did you encounter difficulties in protecting/enforcing your rights as a foreigner in Chile?

Is there any type of enforcement measure missing in Chile's legislation and practices that you consider necessary in order to react against infringements of IP rights? Are penalties proportionate and provide sufficient deterrent against violations?

C. Competition, State Aid/Subsidies and State-Owned Enterprises

49. Have you encountered any anti-competitive practices in Chile (cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.

50. Are you aware of instances where state aid/subsidy granted by the Chile's authorities, both to enterprises supplying goods or services, has had adverse effects on you? If so, please describe the nature of the subsidy and how your business has been affected.

51. Are you aware of (i) any exemptions from the law benefitting Chilean state-owned enterprises, enterprises granted special rights or privileges or designated monopolies, and/or (ii) cases where the Chilean state-owned enterprises, enterprises granted special rights or privileges, or designated monopolies have discriminated against your company or the goods or services supplied by your company when engaged in commercial buying or selling? If so, describe briefly the nature of these practices and the problems encountered.

D. Public procurement

52. Are you satisfied with the current conditions for access to Chile's government procurement markets? If you do not participate in the public procurement market in Chile, what are the main reasons?

53. Has your company encountered particular obstacles while participating or trying to participate in public procurement in Chile? If yes, can you specify the particular difficulties encountered?

54. Please indicate whether you consider that there are regulatory or *de facto* obstacles in any of the following areas:

- a. Transparency in the tendering process (for example access to information on calls for tender)
 - b. Clarity of the applicable rules
 - c. Easy access to the qualification system
 - d. Technical specifications (including on the use of technical standards)
 - e. Effective review mechanisms including the possibility to obtain interim measures (for example accessibility and efficiency of bid protest mechanisms)
 - f. A single point of entry giving an overview of, and access to, all relevant procurement opportunities in a given jurisdiction
 - g. National treatment (for example domestic preferences, local content requirements)
Condition on participation (for example requirement to establish a local branch)
55. Please indicate which key sectors (including utilities sectors), types of contract (public contracts or works concessions/other forms of Public Private Partnership) and procuring entities would be of particular interest to your company.

E. Small and Medium-sized Enterprises (SMEs)

56. Some points above have already referred to SMEs. Please indicate issues which should be prioritized in order that small companies can fully benefit from a possible trade agreement with Chile. Do you think that SME provisions should be covered in some areas of the Chile negotiation? If yes, what SME provisions would you propose, and in relation to of the areas / chapters mentioned above in this questionnaire?

Are you aware of any user-friendly information on trade opportunities for SMEs provided by Chile?

F. Trade and sustainable development and gender

57. *Trade and sustainable development:* In the context of the EU-Chile trade relationship what do you think are the key labour and/or environment issues that a "Trade and Sustainable Development Chapter" should take into account?
58. *Trade and Gender:* Do you consider that there are barriers for women's participation in bilateral trade between the EU and Chile? If so could you briefly describe them? Conversely, are you aware of examples of good practice concerning women's participation in bilateral trade between the EU and Chile in your sector? If so please describe.

G. Anti-corruption

59. Do you agree that the Agreement should contain provisions to prevent and combat corruption related to trade and investment? Which type of issues should be covered?

IV. OTHER ISSUES

60. Are there any other issues related to the topics covered by the above sections or to any other topics that are not mentioned in this questionnaire and that you would like to address?